

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**FIRST HORIZON NATIONAL
CORPORATION, FTN FINANCIAL
SECURITIES CORP., and
FIRST TENNESSEE BANK NATIONAL
ASSOCIATION,**

Plaintiffs,

v.

**CERTAIN UNDERWRITERS AT
LLOYD’S,**
Specifically Syndicate Nos. 2987 BRT and
2488 AGM, Subscribing to Policy Nos.
QA051908/1 and QA052008/1, **and**

ASPEN INSURANCE UK LIMITED,
Subscribing to Policy Nos.
QA051908/1 and QA052008/1,

**U.S. SPECIALTY INSURANCE
COMPANY, and**

FEDERAL INSURANCE COMPANY,

Defendants.

**CIVIL ACTION
NO. 2:11-cv-02608**

JURY TRIAL DEMANDED

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

Plaintiffs First Horizon National Corporation, FTN Financial Securities Corp., and First Tennessee Bank National Association (collectively, “First Horizon”), respectfully submit this memorandum of law in support of their Motion for Leave to File Second Amended Complaint pursuant to the joint Proposed Scheduling Order submitted to the Court and Rule 15(a)(2) of the Federal Rules of Civil Procedure. The proposed Second Amended Complaint is attached to the

Motion as Exhibit A. For the reasons set forth below, First Horizon respectfully requests leave of the Court to file its Second Amended Complaint.

In its Second Amended Complaint, First Horizon seeks to amend its claims: (i) to apprise the Court of facts that were not available at the time of the filing of the original or First Amended Complaint, including additional amounts of covered Loss incurred in defending and settling the underlying *Grede* Lawsuits that are the subject of this lawsuit; and (ii) to add claims for Defendants' bad faith refusal to honor their insurance contracts pursuant to Tenn. Code Ann. § 47-18-109, which became ripe after the First Amended Complaint was filed.

The joint Proposed Scheduling Order, which was agreed to and submitted by all Parties, provides that "Amended and supplemental pleadings must be filed by June 29, 2012. Any subsequent amended and supplemental pleadings shall be permitted only as provided in Rule 15 of the Federal Rules of Civil Procedure." The Second Amended Complaint, which is being filed on June 29, 2012, is therefore expressly permitted by the Parties' joint Proposed Scheduling Order. The Court should permit First Horizon's Second Amended Complaint as consented to by Defendants. *See* Fed. R. Civ. P. 15(a)(2) ("In all other cases, a party may amend its pleading . . . with the opposing party's written consent[.]").

Further, even if Defendants had not consented to the filing of First Horizon's Second Amended Complaint, Rule 15(a) of the Federal Rules of Civil Procedure provides that a party may amend its pleading with leave of court. "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2); *AutoZone, Inc. v. Glidden Co.*, 737 F. Supp. 2d 936, 941 (W.D. Tenn. 2010) (Mays, J.) ("Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend shall be freely given when justice so requires." (quoting *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 520 (6th Cir. 2010))). Because First Horizon has substantial

grounds for its Second Amended Complaint, and because the Second Amended Complaint would not result in undue delay or prejudice, there is no basis to depart from the rule that leave to amend should be freely given. Fed. R. Civ. P. 15(a)(2); *see also Nisby v. Barden Miss. Gaming LLC*, No. 06-2799 Ma., 2007 WL 6892326, at *3 (W.D. Tenn. Sept. 24, 2007) (Mays, J.) (granting motion for leave to amend complaint).

Therefore, First Horizon respectfully requests that the Court grant its Motion for Leave to File Second Amended Complaint and enter the proposed Order attached as Exhibit B.

Dated: June 29, 2012

Respectfully submitted,

/s/ Anthony P. Tatum

Anthony P. Tatum
Georgia Bar No. 306287
Shelby S. Guilbert
Georgia Bar No. 315101
Michael B. Wakefield
Georgia Bar No. 950517
KING & SPALDING LLP
1180 Peachtree Street
Atlanta, GA 30309
404-572-4600 (Phone)
404-572-5138 (Fax)
ttatum@kslaw.com
sguilbert@kslaw.com
mwakefield@kslaw.com

Thomas Lang Wiseman
Tennessee Bar No. 18293
Christopher Lynn Patterson
Tennessee Bar No. 23823
WISEMAN BRAY PLLC
1665 Bonnie Lane, Suite 106
Memphis, TN 38016

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on this 29th day of June, 2012, I electronically filed the foregoing
PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT with the Clerk of Court which will automatically
send notice of such filing to the attorneys referenced below:

DAVID A. WILFORD, admitted *pro hac vice*
CHRISTOPHER T. CONRAD,
admitted *pro hac vice*
JUSTIN SECCOMBE, admitted *pro hac vice*
Flint Creek Corporate View
760 W. Main Street, Suite 210
Barrington, Illinois 60010
(224) 848-4721
dwilford@wilfordconrad.com
cconrad@wilfordconrad.com
jseccombe@wilfordconrad.com

RONALD L. HARPER, Tennessee BPR #15470
NICOLE M. GRIDA, Tennessee BPR #25416
Brinkley Plaza
80 Monroe Avenue, Suite 800
Memphis, Tennessee 38103
(901) 527-0214
ron.harper@leitnerfirm.com
nicole.grida@leitnerfirm.com

Counsel for Certain Underwriters at Lloyd's and Aspen Insurance UK Limited

WILLIAM E. SMITH, admitted *pro hac vice*
MARY CATHERINE MARTIN,
admitted *pro hac vice*
1776 K Street NW
Washington, DC 20006
(202) 719-7000
wsmith@wileyrein.com
mmartin@wileyrein.com

ROBERT F. MILLER, Tennessee BPR #7797
999 S. Shady Grove Road, Suite 500
Memphis, Tennessee 38120
(901) 259-7100
rfmiller@farris-law.com

Counsel for U.S. Specialty Insurance Company

MERRIL HIRSH, admitted *pro hac vice*
RICHARD C. AMBROW,
admitted *pro hac vice*
401 9th St., N.W., Suite 1000
Washington, D.C. 20004
(202) 662-2032
merril.hirsh@troutmansanders.com
richard.ambrow@troutmansanders.com

WILLIAM H. HALTOM, JR.,
Tennessee BPR #6361
JUSTIN JOY, Tennessee BPR #023722
2900 Once Commerce Square
40 South Main Street
Memphis, Tennessee 38103
(901) 525-8721
haltomw@thomasonlaw.com
joyj@thomasonlaw.com

Counsel for Federal Insurance Company

I also certify that I e-mailed a copy to the attorneys referenced above.

/s/ Anthony P. Tatum

Anthony P. Tatum